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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/866,305 05/25/2001 Peter Lea 259/272 4707

22249 7590 09/20/2002

LYON & LYON LLP
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LOS ANGELES, CA 90071

EXAMINER

PADMANABHAN, KARTIC

ART UNIT	PAPER NUMBER
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1641

DATE MAILED: 09/20/2002

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/866,305

Applicant(s)

LEA ET AL.

Examiner

Kartic Padmanabhan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-98 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-98 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-35, drawn to an assay device, classified in class 435, subclass 283.1.
 - II. Claims 36-48, drawn to an assay device, classified in class 435, subclass 287.1.
 - III. Claims 49-55, drawn to an assay device, classified in class 435, subclass 287.3.
 - IV. Claims 56-65 and 98, drawn to an assay device, classified in class 435, subclass 287.7.
 - V. Claims 66-70, drawn to an assay device, classified in class 435, subclass 288.5.
 - VI. Claims 71-80, drawn to an assay device, classified in class 435, subclass 288.7.
 - VII. Claims 81-89, drawn to an assay device, classified in class 436, subclass 518.
 - VIII. Claims 90-97, drawn to an assay device, classified in class 435, subclass 808.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I-VIII are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are all assay device but have different structural requirements. The enclosed cavity of Inventions III, V, VI, and VIII is not required of Inventions I, II, IV, or VII. In addition, Groups I, II, IV, and VII also differ from one another. The reading portion being opposite the planar portion of the insert of Group I is not required of Groups II, IV, or VII. The second surface comprising a portion opposing the major wall and having a space there between of Invention IV is not required of Inventions I, II, or VII. Also, the reading portion being opposite the space of

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Invention VII is not required of Inventions I, II, or IV. Furthermore, Invention III, V, VI, and VIII also differ from one another. The reading portion of Inventions III, V, and VI is not required of invention VIII. Also, the slideable lid of Invention V is not required of Inventions III, VI, or VIII. Also, the second surface of the plate comprising a reading surface of Invention VI is not required of Inventions III, V, or VIII.

3. Because these inventions are distinct for the reasons given above, have acquired a separate status in the art as shown by their different classification and recognized divergent subject matter, and the search required for one group is not required of the others, restriction for examination purposes as indicated is proper.

4. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kartic Padmanabhan whose telephone number is 703-305-0509. The examiner can normally be reached on M-F (8:30-5:00).


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on 703-305-3399. The fax phone numbers for the


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organization where this application or proceeding is assigned are 703-746-5207 for regular communications and 703-305-3014 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

Kartic Padmanabhan
Patent Examiner
Art Unit 1641


September 18, 2002


LONG V. LE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600
09/19/02